IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO.1725 OF 1990

M/s. Reshmo Mac Tools Centre ..Plaintiffs.

Vs.

M/s. L.M.P. Precision Engineering Co. Pvt. Ltd. ..Defendants.

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Mr. R.M. Shah i/b Mr. G.M. Shetty for the Plaintiffs.
Mr. H.V. Chande for the Defendants.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

10th April, 2007.

P.C. :

1. The Plaintiffs sold, supplied and delivered to the Defendants diverse quantities of cutting tools and mill gin stores goods of an aggregate value of Rs.12,87,017.95. A total amount of Rs.7,34,,157.60 was paid by the Plaintiffs, the last payment being on 26th October, 1987. As on 13th October, 1988 a sum of Rs.5,52,860.25 was due and payable towards the balance of the purchase consideration. The Plaintiffs addressed a notice of demand on 26th May, 1989. In reply the Defendants by their letter dated 5th July, 1989 admitted that outstandings were due and payable to the

Plaintiffs but the outstanding amount according to the Defendants was Rs.4,82,944.95 as on 31st March, 1989. The Plaintiffs thereupon by their letter dated 3rd February, 1990 called upon the Defendants to pay the aforesaid admitted sum together with interest at the rate of 18% per annum. There was no reply thereafter from the Defendants. The plaint was amended so as to set up a claim in the amount of Rs.4,82,944.95 being the amount admitted by the Defendants by their letter dated 5th July, 1989.

2. By an order dated 7th October, 1996 passed by Hon'ble Mr. Justice S.H. Kapadia (as his Lordship then was) in Summons for Judgment 222 of 1995, the Defendants were granted leave to defend the suit conditional on a deposit of Rs.4,50,000/- within a period of eight weeks. The record contains an office copy of a non-deposit certificate dated 18th June, 1997 issued by the Master and Assistant Prothonotary. The advocate appearing on behalf of the Plaintiffs moved a precipe on 6th February, 2007 before the Prothonotary and Senior Master recording that the non-deposit certificate dated 18th June, 1997 was misplaced and was not traceable inspite of diligent

search. A duplicate non-deposit certificate was therefore sought. In pursuance thereof a duplicate certificate has been issued by the Master and Assistant Prothonotary.

3. When the suit was placed for the issuance of a decree in view of the non-compliance by the Defendants of the conditional order subject to which leave to defend the suit was granted, Counsel appearing for the Defendants sought an adjournment on 3rd April, 2007 and 9th April, 2007 on the ground that the Defendants had been contacted so as to facilitate a settlement of the claim. Accordingly, the matter was placed on Board today. The Court has been informed that no instructions are forthcoming from the Defendants. At the hearing, counsel appearing for the Defendants has urged only one submission which is that after the order was passed by the Learned Single Judge on 7th October, 1996 granting leave to defend subject to a condition of deposit, the Plaintiffs had waited for over ten years before moving the registry for the placement of the matter for a decree. In my view, the Defendants cannot be heard to assert such an objection for more than one reason. For one thing, Rule 227 of

the High Court Original Side Rules only stipulates that if a Plaintiff does not apply for a decree within six months after the filing of a plaint in the summary suit, the suit shall be set down for dismissal on Board of the Judge in Chambers. The rule does not mandate that the suit shall be dismissed, but confers a discretion on the Judge, a discretion which has to be exercised judiciously. In the present case the fact that a conditional order was passed on 7th October, 1996, the fact that the Defendants have not complied with the condition subject to which leave to defend the suit was granted and the fact that a non-deposit certificate was issued on 18th June, 1997 has not been disputed. Counsel appearing for the Plaintiffs applied for the issuance of a duplicate copy of the non-deposit certificate since the earlier certificate was misplaced. In these circumstances, this is not a fit and proper case where the suit should be dismissed merely on the ground that there has been a delay on the part of the Plaintiffs after the period that was prescribed for compliance by the Defendants for deposit had expired. It must be noted that the suit as instituted is within the period of limitation. The Defendants, it must also be noted, have failed to pay even the admitted dues as reflected in the Defendants' letter

dated 5th July, 1989. Counsel appearing for the Plaintiffs has tendered a compilation of the original documents which are taken on record. The claim in the suit falls within the purview of Order 37 of the Code of Civil Procedure, 1908. The claim is duly established on the basis of the record. Even otherwise, the Plaintiffs will be entitled under the provisions of Order 37 upon the Defendants failing to comply with the condition subject to which leave to defend was granted. The suit shall accordingly stand decreed in terms of prayer clause (a). The Plaintiffs will be entitled to interest on the sum of Rs.4,82,944.95 at the rate of 6% per annum from the date of the institution of the suit until payment or realization and for the costs of the suit.